

## **Attachment of assets (Sachpfändung) and affirmation in lieu of oath**

If you are unable to pay your debts, the creditor may apply to the court for a **bailiff** to attach your goods in your home (cf. §§ 803 et seq. German Code of Civil Proceedings [ZPO]).

### **Prerequisite:**

The claim must have been established by a court, e.g. in a judgment or writ of execution (=title). The title must have been served upon you.

### **Procedure:**

The bailiff is instructed to go to your home to see if there are any attachable items. If you have any cash, savings books, jewellery or securities, he will take these with him (attach them). If the items are very large (e.g. antiques), he will stick a bailiff's stamp on them (Pfandsiegel). This item is then attached. You may continue to use it until the bailiff collects it, but you may not sell it or give it away.

All attached items are publicly auctioned by the bailiff (possibly via the Internet). However, this is only done if the proceeds cover the costs and there is still enough left over for the creditors.

### **What items will not be attached?**

Any items that you and your family need in order to live (e.g. clothing, furniture, a television, food, medical aids etc.) cannot be attached. Pets cannot be attached.

Items that you need for your work or education also cannot be attached (including a computer or your car if you live a long way from your work or work awkward hours!)

The bailiff may exchange a very valuable item.

You must tell the bailiff if an item does not belong to you or has not been paid for. Normally these will not be attached. If he does take such an item, the owner may take legal steps.

*Remember: Suppliers (e.g. mail order firms, car dealers) may always collect items that have not been paid for if you are in arrears with payments, even if the item is one that is basically not attachable.*

### **Does the bailiff announce when he is coming?**

Bailiffs come without notice. If you are not at home, he will leave a note in your letterbox stating when he intends to come back. You should be at home on this date!

If this is not possible, you should phone him to arrange a different date. You must allow the bailiff into your home. If you do not, he will apply for a search warrant and your home can be opened by force.

Gefördert von:

The bailiff is allowed to ask you where you work or whether you have a savings book; you are not obliged to answer! However, if you do answer, you must tell the truth.

**Affirmation in lieu of oath (= affidavit as to the accuracy of an account or an inventory [Offenbarungseid])**

The bailiff may also have been instructed to request you to make an affirmation in lieu of oath (EV). In this way the creditor can find out if you have anything else that can be attached (e.g. wages from your employer). For this you must correctly fill in a several-page questionnaire. For example, you must say what you live on, whether you have any assets, real estate or life insurance policies and where you have your bank account.

You have to swear in lieu of oath that the information you have given is correct and complete. It is a criminal act to give false information.

You may only be asked to give an affirmation in lieu of oath every three years. It is only possible earlier if the creditor can credibly assert that your financial situation has improved. You are not obliged to say that your situation has improved (e.g. that you have found work)!

**Arrest warrant**

If you do not make the affirmation in lieu of oath either at home or in the bailiff's office, the bailiff may apply for an arrest warrant, ordering you to come to his office to fill in the form. If you still refuse, you will be sent to prison, provided the creditor applies for and pays for it (coercive arrest = Erzwingungshaft]).

**Consequences of the affirmation in lieu of oath**

In all likelihood the creditor will apply for enforcement proceedings. Very often accounts or wages will be attached.

*See Attachment of bank accounts under:*

[www.schuldnerberatung-hessen.de/infoblaetter/englisch/P-Konto%20Englisch.pdf](http://www.schuldnerberatung-hessen.de/infoblaetter/englisch/P-Konto%20Englisch.pdf)

*& Attachment of wages and attachment of regular income under:*

[www.schuldnerberatung-hessen.de/infoblaetter/englisch/Einkommenspfaendung%20Englisch.pdf](http://www.schuldnerberatung-hessen.de/infoblaetter/englisch/Einkommenspfaendung%20Englisch.pdf)

When you make an affirmation in lieu of oath, this will be recorded by the court having competence in the execution of civil judgements or the SCHUFA (German credit control organisation).

When you make an affirmation in lieu of oath you basically declare that you are insolvent. If you then enter into new payment obligations (e.g. a hire purchase agreement) and fail to pay the instalments, this may be seen as a case of fraud. If charges are brought against you, you may be sentenced.

*You should tell all your creditors that you have made an affirmation in lieu of oath. The creditor will then reconsider whether it is worth his while applying for enforcement proceedings.*

Gefördert von: